IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

1. S.B. Sales Tax Revision Petition No.358/1999
C.T.O., Circle-F, Jaipur Vs. M/s.Khandelwal Drug Agencies

2. S.B. Sales Tax Revision Petition No.719/1999
M/s.Khandelwal Drug Agencies Vs. C.T.O., Circle-F, Jaipur

3. S.B. Sales Tax Revision Petition No.721/1999
M/s.Khandelwal Drug Agencies Vs. C.T.O., Circle-F, Jaipur

Date of Judgment :: 6th July, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Brij Sharma for Mr.R.B. Mathur for the Revenue.
Mr.J.N. Sharma for the assessee.

1. Heard learned counsel for the parties.

2. These three revision petitions are, one by the Revenue and two by the assessee, directed against the common order of the Rajasthan Sales Tax Tribunal, Ajmer (for short 'the Tribunal') by the impugned order dated 14.6.1995 decided the question that the commodity 'Swad' is not a drug or medicine but is a confectionery item and was accordingly liable to be taxed at general rate of 10% and not at the concessional rate of 6% treating the same as an Ayurvedic medicine. The Tribunal,

however, held that interest could not be levied on such additional tax imposed by the Assessing Authority because the assessee had raised a bona- fide contention before the learned Tax Board that the said commodity was not liable to be taxed at general rate as confectionery item and there is an arguable point in favour of the assessee, therefore, demand of interest on such additional tax was set aside by the Tribunal and, therefore, one revision petition has been filed by the Revenue to the extent of interest levy and two other revision petitions filed by the assessee for challenging the levy of additional tax.

3. Learned counsel for the assessee, Mr. J.N. Sharma, has relied upon the case of **Panama Chemical Works Vs. Union of India** reported in **1992 (62) E.L.T. 241 (M.P.)** wherein the Madhya Pradesh High Court has held that 'SWAD' digestive tables having 3% active ingredients as per Ayurvedic texts and 97% sugar/liquid glucose for taste was classifiable as an Ayurvedic medicine and not as confectionery and, therefore, he submitted that the Tax Board has erred in taking a contrary view. He further submitted that in a subsequent decision, the Madhya Pradesh High Court in the case of **Panjon Private**

Limited & Ors. Vs. Union of India & Ors. decided the same issue again and the Revenue went up in S.L.P. before the Hon'ble Supreme Court where its S.L.P. was rejected by the Hon'ble Supreme Court on 18.4.1994 as reported in **1994 (71) E.L.T. A97**. He further pointed out that the present revision petitions also come up before this Court upon a remand case back to the Rajasthan Taxes Tribunal by the Hon'ble Supreme Court vide order dated 14th March, 1997 passed in Civil Appeal No.1935/1997 arising out of S.L.P.(C) No.18842/1996 M/s. Khandelwal Drug Agencies Vs. C.T.O. along with S.L.P.(C) No.19850/1996. The said order is reproduced hereunder:-

> "Leave granted in both the matters.
>
> The case are remanded back to the Tribunal to enable the appellant to produce relevant evidence to show that in the market "Swad Tablet" is treated as medicine drug or pharmaceutical preparation".

4. Thus, the assessee was enabled and permitted by the Hon'ble Supreme Court to produce the relevant evidence before the Tribunal to show that in the market 'Swad Tablet' was treated as medicine, drug or pharmaceutical preparation.

The assessee, accordingly, produced the additional evidence before the Tribunal. After abolition of the Rajasthan Taxation Tribunal where these revision petitions were again transferred back to this Court and have come up for hearing.

5. Learned counsels at bar agree that since the final fact finding body i.e. Tax Board had no occasion to consider such additional evidence as produced by the assessee, the cases may be remanded back to the Tax Board for consideration of such additional evidence and deciding the issue afresh.

6. There is force in the submission made at the bar and accordingly, these revision petitions are disposed of by setting aside the impugned order passed by the Sales Tax Tribunal (now known as 'Tax Board') dated 14.6.1995 deciding Appeal No.516/93/Jaipur and Appeal No.517/93/Jaipur – M/s. Khandelwal Drug Agencies Vs. C.T.O., Circle-F, Jaipur with a direction to the Tax Board to decide the aforesaid two appeals afresh after considering the additional evidence produced by the assessee. The assessee would be at liberty to produce the same set of additional evidence which has been produced before the

Rajasthan Taxation Tribunal, which has been transferred to this Court before the Tax Board again and the Tax Board shall decide the issue again after consideration of such additional evidence.

7. With the aforesaid observations, these revision petitions are disposed of by remanding the matter back to the Tax Board. Since the matters are very old and pertain to the assessment year 1986-87, it is expected that the Tax Board would decide the controversy as expeditiously as possible preferably within a six months from today. No order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.